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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re SKY B., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

TINA B.,

Defendant and Appellant.

E036481

(Super.Ct.No. INJ-014012)

OPINION

APPEAL from the Superior Court of Riverside County. H. Morgan Dougherty,
Judge. Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and
Appellant.

William C. Katzenstein, County Counsel, and Julie Koons Jarvi, Deputy County
Counsel, for Plaintiff and Respondent.

Konrad S. Lee, under appointment by the Court of Appeal, for Minor.

Tina B. (mother) appeals from juvenile court orders denying her Welfare and Institutions Code section 388¹ petition and terminating her parental rights to her daughter, Sky, born in December 2001.

Mother contends the juvenile court erred in denying her section 388 petition and in not applying the parental relationship exception to terminating parental rights (§ 366.26, subd. (c)(1)(a)). Mother claims her circumstances had changed and it was in Sky's best interest to continue her relationship with mother.

We find no error. The evidence established mother's circumstances were changing but not changed and it was in Sky's best interest to terminate mother's parental rights so that Sky could be placed in a permanent home. The juvenile court orders denying mother's section 388 petition and terminating her parental rights are affirmed.

1. Facts and Procedural Background

In December 2001, mother gave birth to Sky. In January 2002, the Department of Public Social Services (DPSS) received a report that Sky's maternal grandmother (grandmother) and mother were not adequately caring for Sky. Mother and Sky lived with grandmother in a one-bedroom house. As a consequence of the report, the DPSS began monitoring mother's care of Sky. In March 2002, mother moved out of grandmother's home and moved in with friends.

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

The DPSS received another child abuse report in March, and on March 21, 2002, grandmother brought Sky to the DPSS social worker's office. As a consequence, the DPSS placed Sky in a foster home and filed a juvenile dependency petition pursuant to section 300, subdivisions (b) and (g), alleging mother had a substance abuse problem that impaired her ability to care for Sky. Mother frequently left Sky with relatives in a filthy, dilapidated home. Sky's father's whereabouts were unknown.

At the detention hearing in March 2002, the court ordered Sky removed from mother's custody and reunification services provided to mother, including visitation. At the contested jurisdiction hearing in May 2002, the court declared Sky a dependent child of the court and continued reunification services, including visitation. The court found father was not a presumed father.

At the time of the six-month review hearing in November 2002, Sky had been living with relatives since July 2002. Mother had made progress in rehabilitating but was living with her grandfather in his trailer, which was not suitable for Sky. Mother was working for grandfather and had attempted to visit Sky whenever she had transportation. The court continued reunification services.

In January 2003, mother and Sky moved into mother's boyfriend's home. On January 16, 2003, mother tested positive for drugs but it was believed this was because she had taken prescribed medication. Due to mother's progress, at the 12-month review hearing in April 2003, the court ordered Sky returned to mother under family maintenance status.

In January 2004, the DPSS filed a supplemental dependency petition alleging

mother had tested positive for drugs on December 29, 2003, and January 6, 2004. At the detention hearing on January 20, 2004, the court ordered Sky removed from mother's custody and placed in foster care. The court ordered visitation conditional upon mother attending a drug rehabilitation program and testing drug-free for at least 30 days.

At the contested jurisdictional hearing in February 2004, the court terminated reunification services and set a section 366.26 hearing. The court ordered Sky placed with her maternal great-aunt and uncle.

At the end of February, Sky's maternal great-aunt requested Sky placed with the great-aunt's sister and brother-in-law, who wished to adopt Sky. Sky was placed with these new relatives on March 29, 2004, and remained with them up to the time of the section 388 and 366.26 hearings. The DPSS conducted a home study in which it was concluded the caretakers met Sky's basic needs and she had bonded with their family.

On June 4, 2004, mother filed a section 388 petition alleging she had completed a 60-day inpatient rehabilitation program, an eight-week parenting class, and an anger management program. She also was attending a 30-day transition program, had obtained employment as a welder for her grandfather, had suitable housing at her boyfriend's home, and had income resources from her boyfriend, who was working for his father. Mother's supervised visits with Sky went well. The last visit was on May 19, 2004.

On July 6, 2004, the court heard mother's section 388 petition. Mother testified she had completed the 60-day and 30-day programs as of June 29, 2004; attended group counseling once a week; attended AA meetings; tested clean from drugs since March 2004; was working 30 to 40 hours a week; visited Sky 14 to 16 times since January 2004;

last visited Sky on June 29, 2004; and lived with her boyfriend, who owned, with his father, a custom mirror and glass business.

The court continued the hearing to July 19, 2004. The social worker testified mother visited Sky only six times in 2004 and had not visited Sky since May 19, 2004. The social worker believed mother needed individual therapy to address her substance abuse and abuse as a child.

The court denied mother's section 388 petition, indicating that mother's circumstances had changed or were changing but not sufficiently for purposes of granting the petition. The court further found that granting the petition was not in Sky's best interests because Sky needed a permanent, stable home. The court then held the section 366.26 hearing and terminated mother's parental rights, finding that Sky was adoptable and none of the exceptions to terminating parental rights applied.

2. Section 388 Petition

Mother contends the juvenile court abused its discretion in denying her section 388 petition because substantial evidence supported her allegation that her circumstances had changed and the proposed modification was in Sky's best interests. We disagree. In the present case, mother showed changing but not changed circumstances. In addition, the evidence was sufficient to support the trial court's finding that granting the petition was not in Sky's best interests. (§ 388; Cal. Rules of Court, rule 1432(a).)

A. Standard of Review

Section 388 permits a change in a previous court order upon a showing of (1) changed circumstances and (2) a showing that the change in the order might be in the best

interest of the child. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

After termination of reunification services and the setting of a selection and implementation hearing, “. . . the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

“Whether a previously made order should be modified rests within the dependency court’s discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established. [Citation.] The denial of a section 388 motion rarely merits reversal as an abuse of discretion.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

B. Discussion

Upon denying mother’s petition, the juvenile court found that “There are changed circumstances, but, in my opinion, circumstances have not changed.” This statement is clearly contradictory but it appears from the context of the statement that the court intended to state that mother’s circumstances were “changing,” not changed. The evidence supports this finding. While mother had completed a 60-day inpatient rehabilitation program and 30-day transition program, she did not do so until June 29, 2004, less than a month before the section 388 hearing.

In addition, mother had been sober for only about three months at the time of the hearing and had not had any individual counseling to resolve deep underlying problems leading to mother's drug dependency. Since mother had a history of relapsing and had not been sober very long, there remained the risk that mother's rehabilitation was not permanent. After Sky was initially removed from mother's custody, mother appeared to have successfully rehabilitated and the court ordered Sky returned to mother on April 3, 2003. Three months later, mother tested positive for drugs. She also tested positive in December 2003, and January 2004, despite knowing she risked losing custody of Sky.

Mother's drug abuse problems, which were the primary cause of mother losing custody of Sky, were serious and not easily resolved. While mother made admirable attempts to overcome her drug abuse and appeared to be on her way to succeeding in this endeavor at the time of the section 388 petition hearing, she had made similar attempts before but had relapsed and lost custody of her child. The juvenile court could thus reasonably conclude mother had not yet established she had overcome her drug problem and would remain a drug free parent. Her circumstances appeared to be changing but mother had not established they were permanently changed.

The evidence also supports the trial court's finding that granting the section 388 petition was not in Sky's best interests. The court noted: "I have no doubt the mother cares for the child, but ultimately, at some point, this child has a right to have permanency in her life, and, therefore, the Court will deny the 388 motion." Dependency proceedings had been pending for over two years, which consisted of the majority of Sky's life. Although mother claimed she had recently succeeded in rehabilitating, she

had not been sober very long and thus, unfortunately, there was a significant risk she would relapse once again.

Sky's need for placement in a permanent home outweighed any benefits that might exist in continuing Sky's relationship with mother. As is commonly recognized by the courts, "a child's need for permanency and stability cannot be delayed for an extended time without significant detriment." (*Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 611.) As the courts have frequently noted, "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it. [¶] The Legislature has expressed increasing concern with the perceived and accurate reality that time is of the essence in offering permanent planning for dependent children." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038; see also *Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 250-251.) This is particularly true with regard to young children, such as Sky.

Granting mother's section 388 petition would risk further delay in placing Sky in a permanent home and further detriment to Sky in the event mother relapsed again. Under these circumstances, it was reasonable to find that mother had not met her burden of establishing changed circumstances and that granting the section 388 petition was in Sky's best interests, particularly since mother had not established long-term sobriety. The juvenile court thus did not abuse its discretion in denying mother's section 388 petition and terminating parental rights.

3. Parental Relationship Exception

Mother argues the trial court erred when it found the exception for severing beneficial parental relationship with Sky did not apply. (§ 366.26, subd. (c)(1)(A).) We find no error.

We review the court's finding for substantial evidence, which means that "we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion." (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947, petn. for review pending, petn. filed Oct. 10, 2002.)

The parental relationship exception to adoption applies when the court finds a "compelling reason" to conclude that adoption would be "detrimental" to the child because "[t]he parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(A).) The relationship, however, must be more than just a friendship; instead, it must be the sort of parent/child relationship that normally arises from "attention to the child's needs for physical care, nourishment, comfort, affection and stimulation." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) "The parent must do more than demonstrate 'frequent and loving contact[,]' [citation] an emotional bond with the child, or that parent and child find their visits pleasant. [Citation.] Instead, the parent must show that he or she occupies a 'parental role' in the child's life." (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.)

Furthermore, the parental relationship benefit noted in section 366.26, subdivision

(c)(1)(A) must “outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Here, mother did not meet her burden of proving that the beneficial relationship exception applied. Sky lived with mother for a total of only 12 months, which included the first three months of Sky’s life and about nine months, from April 2003 to January 2004. Although mother fairly consistently visited Sky throughout the dependency proceedings, she only visited Sky six times during the seven-month period preceding the section 366.26 hearing, and had not seen Sky since May 19, 2004. We recognize that mother’s rehabilitation program prohibited mother from visiting Sky during the first 30 days of the rehabilitation program.

Under these circumstances, mother’s contributions to Sky’s physical and emotional care and nourishment as a parent were questionable. Because of mother’s infrequent visitation and lack of custody during the seven-month period preceding the section 366.26 hearing, it is doubtful that mother and Sky had the type of parent/child relationship warranting applying the parental relationship exception.

In addition, in March 2004, Sky was placed with her maternal great-aunt and uncle-in-law who wished to adopt her. She had bonded with their family and was doing

well in her new home. Sky's juvenile dependency proceedings had been pending for over two years, with Sky changing homes several times during her life as an infant and toddler. Her need for a permanent, stable home was great and mother's ability to provide her with such a home was tenuous at the time of the section 366.26 hearing.

Furthermore, mother candidly acknowledged her current home and relationship with her boyfriend might not be permanent. Mother had been living at her 20-year-old boyfriend's home, rent free, for about a year and a half but felt their relationship might not be permanent since her relationship was rocky at times.

We conclude the evidence was sufficient to support a reasonable finding that the benefit of placing Sky in a permanent, stable adoptive home outweighed any possible benefit from continuing Sky's relationship with mother. (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at pp. 951-953; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The trial court thus did not err in rejecting the parental relationship exception and terminating mother's parental rights.

5. Disposition

The judgment is affirmed.

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s/Gaut
J.

We concur:

s/McKinster
Acting P. J.

s/King
J.